

REPORT OF THE NATIONAL CONSULTATION

"WOMEN'S PROTECTION AND SAFETY

AGAINST

SEXUAL VIOLENCE, ASSAULT AND RAPE"

ON 6TH JAN 2013



YMCA International Tourist Hostel

Jai Singh Road New Delhi

The National Consultation on “Women’s Protection and safety against Sexual Violence, Assault and Rape” was organised by the National Alliance of Women at YMCA, New Delhi on 6th January 2013.



The consultation was organized to review the present Criminal Laws, the Criminal Law Amendment Bill 2012 which is pending in the Parliament, enactment of a new legislation and appropriate strategies to deal with all forms of violence against women.

There were forty Participants which comprised of eminent social activists, Advocates academicians and leaders from the women’s movement.

The consultation was interspersed with talks and interactive sessions. The speakers spoke on issues of the Politics of Rape and Principles of Development Of Law on the basis of Human Rights Standards, present laws and specific legal reforms – Gendered violence and biases in the criminal Justice system , Comments on Criminal Law Amendment Bill,2012 and specific suggestions for review, Strengthening Institutional mechanisms, police reforms and addressed vulnerabilities of women from tribal, Dalit, Muslims, homeless and other groups facing multiple marginalization.

The keynote address was given by Ms. Indira Jaising the Additional Solicitor General of India.

Ms. Indira Jaising spoke on ‘*The goal of law is to sustain life and not support its destruction*’ she stressed the importance of zero tolerance towards violence. Our constitution has placed Article 15 as a tool on non-discrimination for women. Despite this she fears women have not been able to fight an unequal society and have not been able to deconstruct patriarchy. Violence against Women is converse to equality. Ms. Indira Jaising observed that the women’s movement has not been able to challenge discrimination, unlike the Dalit movement that has succeeded in challenging the same.

Ms. Indira Jaising drew the attention of the participants to New Delhi being called the ‘rape capital’ by the New York Times editorial. She stressed that our focus on rape was myopic and that we needed to look into ways of dismantling the structures of patriarchy. While looking at the entire gamut of violence against women, rape is at one end of the spectrum and therefore it is imperative that we look into where the spectrum begins. For most women Ms. Jaising said, violence commences at home, if that so be the case then we will have to shift our focus and attention to even minimal levels of violence. If we tolerate even minimal levels of violence then women have no right to talk about it as it is too close to our skin. Ms. Jaising said the anonymous rape survivor changed the paradigm from” I’m ashamed” to “I want to live”. We have to focus our attention on punishment, accountability, monitoring and evaluation of laws. We neither have a culture of monitoring and

accountability nor a self correcting mechanism in our society. Thus these self correcting mechanisms mandated by law have to be put in place. We cannot hope to change mind set by training the police and the people. We need tools which is law here to achieve it as the role of law is to sustain life.

Ms. Nandita Haksar a renowned Human Rights Activist spoke on the “*Politics of Rape and Principles of development of law on the basis of Human Rights Standards*” placed certain reforms which have been integrated as recommendations which have been submitted before the Justice Verma Commission.

- She placed certain Media reforms and suggested that a media monitoring group was required. She also said that changes were necessary in corporate media and Print media especially in the regional language papers.
- Social and Educational Reforms in especially medicine and law, Political reforms whereby a code of conduct for political parties could be put in place. These political parties should not put up people who were not gender sensitive. A 10 point program for political parties required to be drafted.
- Police and Judicial reforms are also necessary. Accountability, transparency within these institutions has to be placed.
- She also placed certain Hospital reforms so that medical assistance to survivors of violence can be attended at the earliest.



Ms. Vrinda Grover an Advocate of the Delhi High Court and a Human Rights activist reviewed the present laws and specific legal reforms – Gendered violence and biases in the criminal Justice system.

Ms. Vrinda brought out certain points which she said had to be borne in mind. She spoke about the CHRI campaign on Police reforms the need for which in India is long recognized. The Public Interest Litigation (PIL) in the Supreme Court asking the Court to direct governments to implement the NPC recommendations the drafting of the new model police bill to replace the colonial 1861 Police Act very little was ever done on the ground to improve policing or implement recommendations put forth by any of these committees or commissions. Ms. Grover said it was only a decade later in 2006 that the Court delivered its verdict. In what is popularly referred to as the Prakash Singh case the Supreme Court ordered that reform must take place. The states and union territories were directed to comply with seven binding directives that would kick start reform. These directives pulled together the various strands of Improvement generated since 1979. The Court required immediate implementation of its orders either through executive orders or new police legislation.

She said the Prakash Singh case is acknowledged at every forum as champion of police reforms and said she was also aware of deep rooted Institutional bias within the police.

She was of the opinion that a clear protocol on registering a FIR was required. The time frame within which a complaint has to be lodged, the Supervisory force, who is accountable for it, what are the Disciplinary, administrative and punitive actions that will be taken when there is an omission/ refusal to lodge complaint has to be looked into . However public accountability has been found lacking.

Ms. Vrinda Grover said that Justice Verma Submissions was one of the few instances when the state listened to the people. It is a clear case of eminence over competence. In a meeting with the Home Ministry on August 2012 to discuss the Criminal Law Amendment Bill 2012 the National Advisory Council's reply showed the level of ignorance. She gave an example of the reply they got for 'stalking' which was not possible to prove therefore stalking so not added in the Indian Penal Code. The problem here is that bureaucracy is making laws in this country. Protection of Children from Sexual Offences Bill, 2012 includes sexual assault on children by army and security officials but the same is not mentioned in the Criminal Law Amendment Bill 2012. This Bill, 2012 she said may come for discussions in February session and that there were huge gaps especially the gender neutral laws, Section 377 IPC the judgment is due hopefully it will decriminalize and this judgment may provide a space for transgender persons.



Ms. Nagasaila an Advocate from the High Court of Chennai Commented on Criminal Law Amendment Bill,2012 and made some specific suggestions for review .She spoke about the difficulties faced in registering a case in the police station. She observed that the recent case has had emotional response or uninformed response as the people aren't willing to talk to women's groups. She said while the law defined the offence, the state defined the offender. Who is being prosecuted and how is the same being done, how the law unfolds in its working is a matter of concern. Statistical approach of crime has led to

suppression of crime. This data doesn't reflect the actual statistics.

Ms. Nagasaila stated that Forensic doctors are not equipped to examine rape survivors. The examination according to her has to be done by a gynecologist. The government has provided medical kits to private doctors to handle such cases which they rarely do. There are very Forensic labs and more often than not samples are kept for prolonged periods of time which ultimately have no evidentiary value. Extra judicial procedures are present but implementations of laws have become a problem. Human agencies implement the laws, when the human agency itself is corrupt then it cannot be expected of lawyers to monitor such cases she said.

While discussing the recent demand for chemical castration *Ms. Nagasaila* said South Carolina challenged surgical castration¹. She said she was concerned as to who will face Castration and Death

¹Castration of Sex Offenders: Prisoners' Rights Versus Public Safety Charles L. Scott, MD, and Trent Holmberg, MDJ Am Acad Psychiatry Law 31:502-9, 2003



penalty as research has shown that most death penalty has been issued to persons for Dalit communities. Similar treatment may happen in cases of castration of sexual offenders.

Ms. Sheba George and Ms. Indrani Sinha, spoke about vulnerabilities of women from tribal, Dalit, Muslims, homeless and other communities face multiple marginalizations.

Ms. Sheba George asked for an independent Rapporteur on Violence Against Women for India .She demanded that the Human right Rapporteur visit India for systematic reporting and data gathering on human rights violations and strong independent Institutional mechanisms to prevent crimes against women and monitor implementation of all Laws , reparations , indictments and play the watchdog role on the state of all forms of violence against women and girls in the country with decentralized bodies at state level keeping parallel data on the lines of National Crimes Bureau, working with Home ministry and Departments to make them accountable.

Some of the demands places by the participants who attended the national consultation were

- Human right Rapporteur to visit India for systematic reporting and data gathering on human rights violations.
- To build a Vulnerability index in law – list the vulnerabilities – the logic being if the most vulnerable are safe, then the privileged will be safer.
- Internet based tracking of violence by public officials.
- Filing of FIR through email.



- Giving the victim to decide the quantum of punishment and Commuting of sentence.
- Time limit for investigation 10-15 days.
- Investigation should be made by the special investigation team.
- Recording of statement in electronic form.
- Indecent Representation of Women Act has not implemented .Cinema and advertisements which represent women in an indecent manner are not brought within its purview.
- Recording of rape victim deposition separately without police presence like it is done in Bangkok.
- Fines for sexual assault should be enhanced to few lakhs Under the Indian Penal code.
- In Camera trial should be extended to other sexual offences like trafficking.
- Guidelines for sexual assault cases in courts as trial court cases keep adjourning cases.
- Social media should be used to get local people / group into the women's movement – they have a viewpoint and are allies we can work with.
- Victim should get all possible assistance in cases of rape, lawyers should be appointed to assist special prosecutors.
- Statutes are there in the book, they need to reflect in the police manual.
- There is a shortage of Judicial officers this should be addressed.
- Attitudes of judicial officers needed to be looked at more carefully.
- Speedy trial is necessary justice or speedy trial, so speedy trial doesn't guarantee justice.
- Compensation for rape victims has to be enhanced.
- Criminal justice system requires female lawyers as male lawyers are mostly insensitive.
- Sole testimony of the victim is sufficient to convict the accused.
- Support mechanisms are required.



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